

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 10306 of 2002

Between:

D. Harinath Reddy son of Gangi Reddy, aged 47 years, Scale-I Officer in S.V. Grameena Bank, Chittoor District.

..... PETITIONER

AND

1. The Chairman, Sri Venkateswara Grameena Bank, Head Office at Chittoor.
2. Sri T.Gangadhara Rao, Manager, Chowdasamudram Branch,
Chowdasamudram (RM), Chittoor District.
3. Sri K. Haragopal Reddy, Manager, Santhavellore Branch, Varadayyapalem
(RM) Chittoor District.
4. Sri K.Srinivas, Recovery Officer, Area Officer, C/o Chittoor Branch, Chittoor.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly writ of Mandamus directing the first respondent to consider the case of petitioner for promotion from Scale I to Scale II Officer in accordance with the promotion policy of the Bank in Cir. No. 54/F.411/2001 by filling up all the declared vacancies for which written test was conducted and to declare the promotions of respondents 2 to 4 from Scale I to Scale II Officers on 21.5.2002 as null and void and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.M.N.NARASIMHA REDDY

Counsel for the Respondent No.: MR.K.SRINIVASAMURTHY

The Court made the following :

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ORDER:

Heard the learned counsel appearing for the petitioner and also the learned counsel appearing for the respondents.

The petitioner herein, who is the prospective candidate seeking promotion, filed this Writ Petition, inter alia, seeking for Mandamus directing the respondents to consider his case for promotion from Scale-I to Scale-II Officer in accordance with the Promotion Policy of the Bank issued in Circular No. 54/F.411/2001 in pursuance of the written test conducted and also to declare the respondents 2 to 4 not entitled for promotion.

The case of the petitioner in brief is that he has been appointed and working as Scale I Officer with the respondents. In terms of the aforesaid Circular, the process was started by the respondents for filling up 23 vacancies. Accordingly, the petitioner has been permitted to appear for the written test and also subsequent interview, and successfully passed the same. However, with a view to avoid the petitioner, the respondents have restricted the promotions only up to 20 posts, instead of 23, and further the respondents have given promotions to respondents 2 to 4 herein who are all disqualified. Therefore, having regard to the fact that the petitioner stands fairly well and also having fared well in both the written test and interview, he is entitled to be promoted, whereas respondents 2 to 4 are disqualified since they are convicted and the question of their consideration for promotion does not arise. Hence, the present Writ Petition.

Contesting the claim of the petitioner, it is submitted by the respondents that

as notified, the vacancies were filled up and selection was made for all the 23 posts. But however, in regard to three candidates, since criminal cases were pending, their names were put in sealed cover awaiting the result of the criminal proceedings and therefore, it cannot be said that they filled up of 20 posts, instead of 23 posts. Further it is also pointed out that the respondents 2 to 4 herein have been punished and having regard to the nature of the punishment and also expiry of the period of 3 years from the date of conviction, the said disqualification no longer exists on the date of written test and interview and therefore, their names were included rightly and hence, there are no merits in the Writ Petition.

The learned counsel appearing for the petitioner submits that apparently in view of the specific averments as made in the counter affidavit, the case of the petitioner is conveniently sought to be passed over by giving promotions to the persons who are totally disqualified, and therefore, there is no justification for such inclusion, especially, in view of the eligibility as contemplated in the promotion policy of the Bank dated 29.3.2001. Having regard to the reasons given in the counter affidavit, especially the expiry of the appeal period, there is no impediment in considering the case of the petitioner.

Considering the submissions made and also on perusal of the material, the only question that calls for consideration is as to whether in the facts and circumstances of the case, the petitioner is entitled for promotion.

There is no dispute of the fact that the petitioner is working with the respondent Bank as Scale II Officer. In the process initiated for the purpose of giving effect to the promotions to the Scale II, both in the written test and also in the interview, the petitioner was permitted to appear and accordingly, the petitioner fared well. However, the only grievance of the petitioner is that the names of the respondents 2 to 4 have not been included and if their names were included, his name stands next for the purpose of consideration. Apart from that, it is also pointed out that it is only 20 posts, which have been filled up out of 23, which have been sought for promotion. Though the application is sought to be denied by the respondents herein, it is his case that other three names would not be announced in view of the pendency of the Criminal Case and their names were put in the sealed cover. In view of these circumstances, it is necessary to take into consideration the conditions imposed in the promotion policy dated 29th March 2001, which

contemplates in Clause 3 pertaining to the eligibility, to the effect that for the purpose of reckoning the minimum service of eight years, the cut off date is 1st April of the year in which the vacancy is expected to arise or has actually arisen. Further, in case of punishment or remand, the same cannot be a ground for rejection to such person. For the purpose of convenience Clause 3 and Clause 3(a) reads as follows:

“03. Eligibility: Minimum of eight years of service as an Officer/Field Supervisor in the Bank as on 1st April of the year in which the vacancy is expected to arise or has actually arisen. The number of Officers to be considered for Promotions shall be restricted to three times the number of vacancies available for promotion.

03(a). In the case of Officer who is awarded with a punishment other than Reprimand, he will not be eligible for considering for promotion for a period of three years from the date of punishment. In case the punishment given was a ‘Reprimand’, the Officer is not eligible for considering for promotion for one year from the date of punishment.”

From the above, it is evident that the said clauses which are relevant for the purpose of dispute involved in this case in regard to the eligibility which contemplates 1st April of the year to be the cut off date for the purposes of eligibility. Further, in case of other punishment of reprimand, still his case can be considered. In this case, admittedly, the second respondent was punished on 30th March 1999 and the period of three years would expire by 30th March 2002. In regard to the fourth respondent, he was punished on 20.11.1998 and his period of minimum three years would expire on 20.11.2001. Even taking into account the dates of written test and also the interview, both the respondents 2 and 4 would not be completing minimum period of three years. Further, in regard to the third respondent, he was punished on 16.4.2002 with reprimand. Clause 3(a) states that even in case of Reprimand though his case has to be considered, but necessarily the authorities have to take into account the various other features. Where as in this case, nothing is stated as to with what feature the third respondent is weighed with for giving effect to the promotions. No specific allegation is made nor any particulars have been given in this regard. In view of the same, on the face of it, it has to be held that all the three respondents viz., respondents 2 to 4 are virtually disqualified to be considered

for the purpose of promotion. In a Decision reported in BHUPINDERPAL SINGH VS. STTE OF PUNJAB, the Supreme Court has laid down various principles and also how such dates have to be reckoned. However, that was the case of fresh appointment calling for the applications by way of advertisement, whereas, the case on hand is not similar to that case. In this case, the date of notification and even the last date of receipt of applications can have any amount of bearing on the issue. In the circumstances, it has to be held that the plea of the respondents 2 to 4 that they have completed three years even on the date of written test and interview cannot be found and even criminal cases have been pending against them and therefore, their names were put up in a sealed cover.

Be that as it may, once the respondents 2 to 4 are excluded, necessarily petitioner's claim comes next for the purpose of consideration. In view of the same, petitioner is entitled for consideration of promotion.

Accordingly, the Writ Petition is allowed and the respondents are directed to consider the case of the petitioner for the purpose of promotion from Scale-I to Scale II Officer. No Costs.

29.12.2004

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, The Twenty Ninth Day of December Two Thousand and Four.

To

1. The Chairman, Sri Venkateswara Grameena Bank, Head Office at Chittoor.
2. Sri T.Gangadhara Rao, Manager, Chowdasamudram Branch,
Chowdasamudram (RM), Chittoor District.
3. Sri K. Haragopal Reddy, Manager, Santhavellore Branch, Varadayypalem
(RM) Chittoor District.
4. Sri K.Srinivas, Recovery Officer, Area Officer, C/o Chittoor Branch, Chittoor.
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